

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:02CV167-MU-02

SAL BART SIRACUSA,
Petitioner,

v.

ROY COOPER, N.C. Attorney Gen.)
Respondent.
_____)

ORDER

THIS MATTER comes before the Court on petitioner's post-appeal "Motion To Alter Or Amend Judgment Based on Fraud" (document # 20); and on his "Motion For Judicial Notice Of Adjudicative Fact" (document # 22).

A review of the record of this matter reflects that on or about December 9, 2002, the petitioner filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. §2254; that on March 24, 2003, the respondent filed his "Motion For Summary Judgment And Answer To Petition . . . "; and that on April 26, 2004, this Court granted the respondent's Motion, thereby denying and dismissing the petitioner's Habeas Petition. Furthermore, and more critically, the record reflects that this Court's decision was affirmed on appeal by the Fourth Circuit Court of Appeals in an Order entered August 18, 2004; and that the petitioner's Petition for rehearing and rehearing en banc was denied by that Court on November 8, 2004. Accordingly, the Court of Appeals'

mandate was entered November 16, 2004.

Undaunted by his lack of success, the petitioner has returned to this Court on the instant two Motions. By his Motion to Alter or Amend, the petitioner argues that the Court should reconsider its prior dismissal on the basis of fraud. That is, the petitioner asserts that he now can establish by documentary proof that his criminal history was erroneously calculated. Suffice it to say, however, the petitioner is not entitled to any relief on this basis.

Rather, as the respondent noted in his response to this particular Motion, the petitioner here is merely making a belated attempt to re-litigate matters with which he previously has been unsuccessful, i.e., the claim of his erroneously calculated criminal history points. Therefore, on that basis the petitioner simply cannot demonstrate the existence of any extraordinary circumstances which would warrant relief.

Moreover, this Court finds as to both Motions that inasmuch as the Fourth Circuit already has rendered a decision, this Court simply does not have authority to entertain the instant Motions. Consequently, the petitioner's Motions to Alter and Amend for Judicial Notice both are **DENIED**.

SO ORDERED.

Signed: October 3, 2005

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

